

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
(Attorney Docket № 14794US02)**

In the Application of:

Jeyhan Karaoguz, et al.

Serial No. 10/675,287

Filed: September 30, 2003

For: MEDIA EXCHANGE NETWORK
SUPPORTING TRANSPARENT
PC-TO-PC MEDIA INTERCHANGE
INTERFACE ALSO AVAILABLE

Examiner: Patrick A. Ryan

Group Art Unit: 2427

Confirmation No. 5434

Electronically Filed on 13-JAN-2010

REPLY BRIEF

MS: APPEAL BRIEF-PATENTS
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

In accordance with 37 CFR 41.41, the Appellant submits this Reply Brief in response to the Examiner's Answer mailed on November 19, 2009. Claims 1-31 are pending in the present Application. The Appellant has responded to the Examiner in the Examiner's Answer, as found in the following Argument section.

As may be verified in his final Office Action (page 4), dated May 5, 2009 ("Final Office Action"), the present application includes pending claims 1-31, all of which stand

rejected under 35 U.S.C. § 103(a). See the Final Office Action at page 3. To aid the Board in identifying corresponding arguments, the Appellant has used the same headings in the Argument section of this Reply Brief as the headings found in the Appellant's corresponding Brief on Appeal. The Brief on Appeal has a date of deposit of September 28, 2009.

STATUS OF THE CLAIMS

Claims 1-31 were finally rejected. Pending claims 1-31 are the subject of this appeal.

ARGUMENT

I-A1. Rejection of Independent Claims 1, 11 and 21

The Appellant stands by the argument made in the corresponding section of the Brief on Appeal.

In response to Appellant's Brief on Appeal, the Examiner is using the following argument stated on pages 10-12 of the Examiner's Answer:

In addressing Claims 1, 11, and 21, the Examiner has presented that Novak demonstrates (Paragraphs [0058,0080]) two examples of "transparently transferring" a media channel: (1) by way of a "token" that is sent bye-mail to the end user and (2) by way of a software application such a Java applet. In regards to the "token," Novak discloses that "the token may trigger an application (or the token itself can be an application) that causes the EPG 153 and/or the set top box 152 to add the synthetic channel to the program listings of the EPG 153 or to monitor the web site 124 for media program information" (Paragraph [0058]) and "[w]hen installed or launched, the subscription token updates the EPG 153 to add the synthetic channel as an available channel..." (Paragraph [0080]). In regards to the "Java applet," Novak discloses that "the end user can separately receive software (in a diskette sent via postal mail, as an example) and then run that software to update the EPG 153 or to otherwise subscribe to the synthetic channel" (Paragraph [0058]) and "[u]pon reaching the web site 124, a piece of software, such as a Java applet or Javascript, is automatically downloaded from the web site 124 to the set top box 152, and triggers an update of the EPG 153 stored in the set top box 152 to add synthetic channel listings" (Paragraph [0080]). The Examiner has additionally cited Paragraphs [0041, 0059, 0085, and 0086] that describe the process of transmitting and receiving the synthetic channel once the end user has subscribed using the token or Java software.

Both the Examiner and Appellant seem to agree that the "transparently transferring" limitation refers relative to the end user, in other words the end user does not see or is not aware of mechanisms involved in the transfer of information. Appellant's arguments center around the idea that the end user in Novak's system is aware of the information being transmitted because, in each example cited by the Examiner, user interaction is disclosed as part of the process for receiving the synthetic channel and therefore the transferring is not performed transparently.

However, it is the Examiner's position that, in view of the specification and as claimed, user interaction is not precluded from an act of transparently transferring.

The Appellant respectfully disagrees, especially with the above emphasized citation. Initially, the Appellant disagrees with Examiner's assumption that "[b]oth the Examiner and Appellant seem to agree that the "transparently transferring" limitation refers relative to the end user, in other words the end user does not see or is not aware of mechanisms involved in the transfer of information." Nowhere in the prosecution history so far has the Appellant agreed to such definition of "transparently transferring". More specifically, **the Appellant does not agree that "transparently transferring" is tied only to the end user not being "aware of *mechanisms* involved in the transfer of information."** The Appellant's previous arguments (see e.g., pages 5-9 of the 09/28/2009 Appeal Brief) explained that regardless of the user interaction used in Novak (opening an email attachment or launching an applet), it is the user interaction that triggers the transfer. **Obviously, since the user interaction (and actions by the user) trigger the transfer (either by opening the email attachment or by launching the applet), such transfer will not (and cannot) qualify as a "transparent" transfer. In other words, user interaction is not precluded from an act of "transparently transferring" and such act may still be considered "transparent", as long as the user interaction does not trigger/cause the "transferring". Since the transferring in Novak is triggered/caused by the user interaction, however, no transparent transferring is disclosed by Novak.**

In response to Appellant's Brief on Appeal, the Examiner is using the following argument stated on pages 12-13 of the Examiner's Answer:

...

The Examiner also submits Page 15 Lines 23-25 (Paragraph [48]), which state: "[a]n authorization may be received from the second location 110 prior to transparently transferring the selected channels to at least the second location 110".

In view of Appellant's Specification, it is the Examiner's position that the second user (i.e. "Mom") is aware of the first user's (i.e. the "Brother's") intention of transferring media because "Mom may authorize brother to transparently transfer media..." Appellant's specification demonstrates that the act of transparently transferring can involve user awareness and user interaction prior to the transmission of information. The Examiner therefore submits that Novak's disclosure of end user interaction prior to the transfer of a synthetic channel (i.e. opening an email or navigating to a website) is within the scope of the claimed "transparently transferring" as described by Appellant's Specification.

The Appellant disagrees. Even though "Mom" may be *aware* of "Brother's" intention of transferring media, "Mom" (unlike the user in Novak) is not aware of when such transfer will take place, nor has "Mom" triggered/caused the transfer. As previously explained, Novak discloses more than "end user interaction prior to the transfer of a synthetic channel". **Novak's end user interaction in fact causes the transfer and, therefore, the transfer is not transparent to the user.**

The Appellant respectfully submits that independent claims 1, 11 and 21 are allowable.

I-C. Rejection of Dependent Claims 2-5, 12-15 and 22-25

The Appellant stands by the argument made in the corresponding section of the Brief on Appeal.

The Appellant respectfully submits that dependent claims 2-5, 12-15 and 22-25 are allowable.

I-D. Rejection of Dependent Claims 8-10, 18-20 and 28-30

The Appellant stands by the argument made in the corresponding section of the Brief on Appeal.

The Appellant respectfully submits that dependent claims 8-10, 18-20 and 28-30 are allowable.

I-E. Rejection of Dependent Claim 31

The Appellant stands by the argument made in the corresponding section of the Brief on Appeal.

The Appellant respectfully submits that dependent claim 31 is allowable.

I-F. Rejection of Dependent Claims 6-7, 16-17 and 26-27

The Appellant stands by the argument made in the corresponding section of the Brief on Appeal.

The Appellant respectfully submits that dependent claims 6-7, 16-17 and 26-27 are allowable.

CONCLUSION

The Appellant submits that the pending claims are allowable in all respects. Reversal of the Examiner's rejections for all the pending claims and issuance of a patent on the Application are therefore requested from the Board.

The Commissioner is hereby authorized to charge additional fee(s) or credit overpayment(s) to the deposit account of McAndrews, Held & Malloy, Account No. 13-0017.

Respectfully submitted,

Date: 13-JAN-2010

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